

REMARKS

Applicant has amended his claims herein to better clarify the invention. Claim 1 is amended herein to recite a jojoba extract formed by extracting jojoba meal with 100% ethanol. Support can be found in the Specification at Example II on Page 9 at Lines 9-14.

No new matter has been entered. Reexamination and reconsideration of the application, as amended, is respectfully requested.

Claims 1, 2, 5-7, and 9-12, stand rejected under 35 USC 102(e) as being anticipated by Bassi et al. (U.S. Pat. No. 6,982,164).

Claim 1 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Pat. No. 7,029,709 (the '709 Patent).

Regarding the nonstatutory obviousness-type double patenting rejection of claim 1, claim 1 of the '709 Patent recites, *inter alia*, forming an aqueous mixture of jojoba meal. The instant claim 1, as amended herein, recites a jojoba extract formed by extracting jojoba meal with 100% ethanol. Applicant respectfully submits that claim 1, as amended herein, is patentably distinct from claim 1 of the '709 Patent.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987); MPEP 2131. Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed.Cir. 1989).

Bassi et al. teach treating jojoba meal with water to extract both jojoba proteins and simmonsins compounds from the jojoba meal. For example, Bassi et al. in FIG. 3 teach disposing jojoba meal in either water (step 2) or an aqueous alkaline dispersion (step 10). Similarly, in Examples 1, 2, 3, and 4, Bassi et al. teach treating jojoba meal with water, 50% aqueous sodium hydroxide, 36% aqueous hydrochloric acid, 50% aqueous sodium hydroxide, respectively. Example 5 utilizes the products of Example 1, and Example 6 utilizes the products of Examples 1 and 2.

In contrast, claim 1 is amended herein to recite extracting jojoba meal with 100% ethanol. Applicant trusts the Examiner will appreciate that treating jojoba meal with water results in extraction of jojoba protein. In contrast, extracting jojoba meal with 100% ethanol does not extract jojoba protein.

Bassi et al. nowhere teaches extracting jojoba meal with 100% ethanol as recited by claim 1, as amended herein. This being the case, Applicant respectfully submits that Bassi et al. fails to teach all the elements of Applicant's claim 1, as amended herein. This being the case, Applicant respectfully submits that claim 1, as amended herein, is patentable over the teachings of Bassi et al.

Claims 2, 5-7, and 12, as amended herein, depend, directly or indirectly, from claim 1, as amended herein. Under 35 U.S.C. § 112, fourth paragraph, "a claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." Applicants respectfully submit that claims 2, 5-7, and 12, as amended herein, are patentable over Bassi et al.

Having dealt with all of the outstanding objections and/or rejections of the claims,

Applicants submit that the application as amended is in condition for allowance, and an allowance at an early date is respectfully solicited. In the event there are any fee deficiencies or additional fees are payable, please charge them, or credit an overpayment, to our Deposit Account No. 502262.

Respectfully submitted,

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February 12, 2008

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